



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/632,036	08/03/2000	Pravin T.P. Kaumaya	18525-04011	9722

24024 7590 05/05/2004

CALFEE HALTER & GRISWOLD, LLP  
800 SUPERIOR AVENUE  
SUITE 1400  
CLEVELAND, OH 44114

EXAMINER

RAWLINGS, STEPHEN L

ART UNIT	PAPER NUMBER
----------	--------------

1642

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE**

**U.S. Patent and Trademark Office**

Address : COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---------------------------------------------------	---------------------

EXAMINER
----------

ART UNIT	PAPER
----------	-------

20040423

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

### **Notice of Non-Responsive Election**

1. The reply filed December 8, 2003 is acknowledged and has been entered.
2. The reply filed on December 8, 2003 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

In reply to the Office Action mailed August 6, 2003, Applicants elects the group of claims 1, 3-9, 11-20, and 31.

As set forth in the restriction, claims 1, 3-9, 11-20, and 31 are drawn to a genus of patentably distinct inventions, or compositions comprising a chimeric peptide comprising one or more HER-2 B cell epitopes and/or one or more HER-2 CTL epitopes, a T helper epitope, and a linker, wherein said HER-2 B cell epitopes are selected from the group consisting those set forth as SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9, SEQ ID NO: 10, SEQ ID NO: 11, SEQ ID NO: 12, and SEQ ID NO: 42 and wherein said HER-2 CTL epitopes are selected from those set forth as SEQ ID NO: 21, SEQ ID NO: 22, SEQ ID NO: 23, SEQ ID NO: 24, SEQ ID NO: 25, SEQ ID NO: 26, SEQ ID NO: 27, SEQ ID NO: 28, SEQ ID NO: 29, SEQ ID NO: 30, SEQ ID NO: 31, SEQ ID NO: 32, SEQ ID NO: 33, SEQ ID NO: 34, SEQ ID NO: 35, SEQ ID NO: 36, SEQ ID NO: 37, SEQ ID NO: 38, SEQ ID NO: 39, SEQ ID NO: 40, and SEQ ID NO: 41.

At page 3 of the Office action, it is stated that if Applicant elects one of the inventions encompassed by claims 1, 3-9, 11-20, and 31, Applicant must do so by specifically identifying the chimeric peptide to which the claims are to be drawn; the chimeric peptide may consist of one or more of the HER-2 B cell epitopes selected from the group consisting those set forth as SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9, SEQ ID NO: 10, SEQ ID NO: 11, SEQ ID NO: 12, and SEQ ID NO: 42 and/or one or more of the HER-2 CTL epitopes selected from those set forth as SEQ ID NO: 21, SEQ ID NO: 22, SEQ ID NO: 23, SEQ ID NO: 24, SEQ ID NO: 25, SEQ ID NO: 26, SEQ ID NO: 27, SEQ ID NO: 28, SEQ ID NO: 29, SEQ ID NO: 30, SEQ ID NO: 31,

Art Unit: 1642

SEQ ID NO: 32, SEQ ID NO: 33, SEQ ID NO: 34, SEQ ID NO: 35, SEQ ID NO: 36, SEQ ID NO: 37, SEQ ID NO: 38, SEQ ID NO: 39, SEQ ID NO: 40, and SEQ ID NO: 41.

In addition, at page 3 of the Office action, it is stated that if Applicant elects one of the inventions encompassed by claims 1, 3-9, 11-20, and 31, examples of such an election include the invention of claims 1, 3-9, 11-20, and 31, insofar as the claims are drawn to a composition comprising a chimeric peptide that comprises SEQ ID NO: 1 and SEQ ID NO: 21 and the invention of claims 1, 3-9, 11-20, and 31, insofar as the claims are drawn to a composition comprising a chimeric peptide comprising SEQ ID NO: 2, SEQ ID NO: 3, and SEQ ID NO: 22.

Therefore, in responding to the Office action mailed August 6, 2003, Applicant failed to make an election as required by the Office action, since Applicant did not election an invention of claims 1, 3-9, 11-20, and 31 by specifically identifying the chimeric peptide to which the claims are to be drawn; the chimeric peptide may consist of one or more of the HER-2 B cell epitopes selected from the group consisting those set forth as SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9, SEQ ID NO: 10, SEQ ID NO: 11, SEQ ID NO: 12, and SEQ ID NO: 42 and/or one or more of the HER-2 CTL epitopes selected from those set forth as SEQ ID NO: 21, SEQ ID NO: 22, SEQ ID NO: 23, SEQ ID NO: 24, SEQ ID NO: 25, SEQ ID NO: 26, SEQ ID NO: 27, SEQ ID NO: 28, SEQ ID NO: 29, SEQ ID NO: 30, SEQ ID NO: 31, SEQ ID NO: 32, SEQ ID NO: 33, SEQ ID NO: 34, SEQ ID NO: 35, SEQ ID NO: 36, SEQ ID NO: 37, SEQ ID NO: 38, SEQ ID NO: 39, SEQ ID NO: 40, and SEQ ID NO: 41.

Further regarding Applicant's reply to the Office action mailed August 6, 2003, it is noted that Applicant elects several species of invention. However, the restriction set forth in the Office action only requires Applicant to elect one of the patentably distinct species of invention encompassed by generic claims of the elected group of by identifying the T helper epitope to which the claims will be drawn during prosecution on the merits, which T cell epitope is selected from those set forth as SEQ ID NO: 13, SEQ ID NO: 14, SEQ ID NO: 15, SEQ ID NO: 16, SEQ ID NO: 17, SEQ ID NO: 18, and SEQ ID NO: 18.

Accordingly, in reply to this Office communication, Applicant is required to elect a single invention encompassed by claims 1, 3-9, 11-20, and 31 by specifically identifying the chimeric peptide to which the claims are to be drawn; the chimeric peptide may consist of one or more of the HER-2 B cell epitopes selected from the group consisting those set forth as SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9, SEQ ID NO: 10, SEQ ID NO: 11, SEQ ID NO: 12, and SEQ ID NO: 42 and/or one or more of the HER-2 CTL epitopes selected from those set forth as SEQ ID NO: 21, SEQ ID NO: 22, SEQ ID NO: 23, SEQ ID NO: 24, SEQ ID NO: 25, SEQ ID NO: 26, SEQ ID NO: 27, SEQ ID NO: 28, SEQ ID NO: 29, SEQ ID NO: 30, SEQ ID NO: 31, SEQ ID NO: 32, SEQ ID NO: 33, SEQ ID NO: 34, SEQ ID NO: 35, SEQ ID NO: 36, SEQ ID NO: 37, SEQ ID NO: 38, SEQ ID NO: 39, SEQ ID NO: 40, and SEQ ID NO: 41. In addition, Applicant is required to elect a single species of the generic invention by specifically identifying the T helper epitope to which the claims of the elected group of claims will be drawn during prosecution on the merits, which T cell epitope is selected from those set forth as SEQ ID NO: 13, SEQ ID NO: 14, SEQ ID NO: 15, SEQ ID NO: 16, SEQ ID NO: 17, SEQ ID NO: 18, and SEQ ID NO: 18.

3. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (571) 272-0836. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne (Bonnie) Eyler, Ph.D. can be reached on (571) 272-0871. The fax

Art Unit: 1642

phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

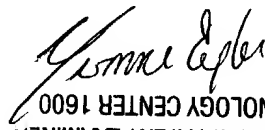
Stephen L. Rawlings, Ph.D.

Examiner

Art Unit 1642

slr

April 23, 2004

  
YVONNE EYLEY, PH.D.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600